SUPPLEMENT TO

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BANGALORE, THURSDAY, SEPTEMBER 9, 1909.

Abstract Proceedings of the Mysore Legislative Council.

The Council met in the Council Chamber, Public Office Buildings, Bangalore, on Thursday the 2nd September 1909, at 1 P.M.

PRESENT.

T. ANANDA ROW, ESQ., B.A., Dewan (Presiding).

Ex-officio Members.

K. P. PUTTANNA CHETTY, ESQ., (First Councillor).
H. V. NANJUNDAYYA, ESQ., M.A., M.L., (Second Councillor).

Additional Members.

Official.

K. S. CHANDRASEKHARA AIYAR, ESQ., B.A., B.L.
RAJAKARYAPRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
S. NARAYANA RAO, ESQ.
D. DEVARAJ URS, ESQ.
D. SHAMA RAO, ESQ.
M. MUTHANNA, ESQ., RAO BAHADUR.

Non-official.

RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.
B. NAGAPPA, ESQ., Bar.-at-law.
SYED AMIR HASSAN, ESQ.
B. THIRUMALACHAR, ESQ., B.L.

ABSENT.

Non-official.

M. C. RANGIENGAR, ESQ., B.A.

PRESENT.

S. HIRIYANNAIYA, ESQ., M.A., B.L., (Secretary).

The Secretary announced that the following additional members took their seats in the Council :—

Official.

RAJAKARYAPRAVINA A. RANGASWAMI IYENGAR, ESQ., B.A., B.L.
S. NARAYANA RAO, ESQ.
D. DEVARAJ URS, ESQ.
D. SHAMA RAO, ESQ.
M. MUTHANNA, ESQ., RAO BAHADUR.

Non-official.

RAJAMANTRAPRAVINA C. SRINIVASIENGAR, ESQ.
B. NAGAPPA, ESQ., Bar.-at-law.
SYED AMIR HASSAN, ESQ.
B. THIRUMALACHAR, ESQ., B.L.

The Secretary reported that the Bill further to amend the Mysore Land Revenue Code, Regulation IV of 1888, and the Bill further to amend the City of Mysore Improvement Regulation, 1903, received the assent of His Highness the Maharaja on the 11th January 1909.

THE PRESIDENT.—With the permission of the Council and for the convenience of the Revenue Commissioner (Rajakaryapravina Mr. A. Rangaswami Iyengar) there will be a slight change in the order of subjects to be taken up. I now call upon Mr. Rangaswami Iyengar to move proposition No. 14 on the agenda.

The Bill to provide a law relating to Treasure-Trove in Mysore.

RAJAKARYAPRAVINA MR. A. RANGASWAMI IYENGAR then moved that the report of the Select Committee on the Bill to provide a law relating to treasure-trove in Mysore and the Bill as amended by the Committee be taken up for consideration; and in doing so, he said :—

SIR,—In presenting the report of the Select Committee on the treasure-trove Bill, I beg leave to state that at the meeting of this Council on 16th December 1908, this Bill was introduced by me and read in Council and a Select Committee appointed. The provisions of the Bill were very carefully examined by the Select Committee at its meetings and a few alterations and additions which were considered necessary were adopted. The Committee were unanimous as regards all the alterations proposed excepting one on which Mr. Nagappa has recorded a note of dissent. The Bill as altered in Committee was published with a detailed report with Notification No. 13, dated 13th July 1909. Thus the Bill as amended has been before the public for more than six weeks but has not so far elicited any complaint or unfavourable criticism.

Before proceeding to state the changes introduced into the Bill by the Select Committee in order to show in what respects it differs from Act VI of 1878 of the Government of India, I beg briefly to refer to the circumstances under which this Bill was undertaken.

As the Members of this Council are aware, the existing law on treasure-trove is contained in Chief Commissioner's Notification No. 6, dated 17th April 1867, which was adapted from Regulation XI of 1832 of the Madras Code. The Government of India Act, VI of 1878, was then passed (as explained by the Hon'ble Sir Edward Bayley) after a careful consideration of the principles of the law on the subject prevailing in many of the States of Europe.

Though the legality of the notification of the Chief Commissioner was doubted so early as 1886 and though the need for the early passing of a Regulation was admitted, the members of the Mysore Government were unwilling to materially alter the provisions of the notification which had been in force and had been acted upon for many years. Many drafts were tentatively prepared and considered but it was finally resolved to adopt the British enactment with suitable alterations. A

Draft Regulation was accordingly prepared and submitted to the Council and the same as finally revised by the Select Committee is now before the Council.

With the assistance of marginal notes and the special printing of the clauses in the Draft Bill the Council will be able to follow the changes that have been introduced and to judge of their appropriateness. I shall proceed to refer to them in the order in which they occur in the Bill.

The first addition that calls for notice is the definition of the term "finder" which has been added in clause 3. Though the meaning of the word is fairly clear and simple, some difficulty might be felt in deciding under certain circumstances as to who should be considered to have really found the treasure and it was considered advisable to add a definition to indicate in what sense "finder" should be construed. The definition or comment is added to indicate that the employer or the principal at whose bidding the actual finder of the treasure worked should be regarded as the finder. When it is recollected that articles discovered in the course of the explorations directed by the Archæologists and others could come under the class of treasure-trove, the practical use of this definition would be obvious.

An additional clause has been added to the definition of "owner" expressly bringing out the right of Government to step in as owner of the land where the treasure-trove might be found, in accordance with the intention of the Select Committee to reserve to Government the right to claim a part of the treasure-trove under certain circumstances, and I shall have to refer to this provision in greater detail later on.

Sections 8 and 9 of Act VI of 1878 provide for treasure being considered ownerless unless there is reason to believe that the treasure was hidden within 100 years before the date of its being found. But as in practice it would be very difficult for any person to produce evidence to prove that it was so hidden and as it is possible to conceive of cases where the right of a person to claim the treasure could be made out, though without being able to prove satisfactorily that the treasure had been hidden within that period, it has been considered advisable to safeguard such rights by adding the words "or otherwise" in clauses 11, 12 (*b*) and 13.

I now beg to refer to clause 16 of the Bill, which is a provision contained in the Rules of 1867 and which the Government has thought fit to retain in the new enactment and which is the only provision which has been objected to by one of the members of the Select Committee in the note of dissent already referred to.

I have to refer to this out of its order as the modification in clause 12 is only a logical consequence of it and would not be clear without reference to it. As it is an important deviation from the policy of Act VI of 1878, I think it desirable to discuss it in some detail. The Hon'ble Sir Edward Bayley when introducing the Bill relating to "Treasure-Trove" referred to the policy which had ruled the various systems of the law on the subject and observed that "the principle which the existing Indian Law, so far as there was any law, had adopted, was practically that of the Middle Ages;" that "according to it the State might be said to assume its right but to waive it on certain conditions and within certain limits in favor of the finder;" and that "where no prior claim could be proved, it was at least a fair contention that property of any value so found should pass to the public treasury and be used for the purposes of the general community." Again, in presenting the report of the Select Committee for consideration he observed that "the existing law was founded upon the principle that all treasure-trove lapsed to and became the property of the State. That was a principle which was in theory perfectly defensible and was not to be denied." When introducing the Bill before the Legislative Council, he remarked that "he might say roughly that the purport of the law in this respect was to assert the general right of the State but to waive that right upon certain conditions in favor of the finder when the property did not exceed the value of a lakh of rupees though the law had never brought one single rupee worth to the Government Treasury." Notwithstanding these clear admissions in favor of the State, its right was deliberately abandoned in the hope that by such a measure finders would be induced to readily come forward and report all cases of the discovery of hidden treasure. It is difficult to say how far this hope was realized as there are no statistics available on the subject. But there are other reasons which I shall presently mention, from which it will be clear that the surrender of the rights of Government can really have no effect one way or the other.

The Government does not claim any share in the treasure-trove when it does not exceed a lakh and if such a sum cannot be a sufficient bait for report of the find, it is very unlikely, nay impossible, that the release of Government claim upon the excess can be a more potent factor. Though no instances of hidden treasure exceeding a lakh in value have been reported, it cannot be asserted that in India some cases of the kind may not come to light, and Mr. Bayley himself said, "that there was much hidden treasure in India, and that much was being perpetually brought to light in various parts of the country and that very large portion of it was of importance." Even though the Government may surrender their right, they cannot very well ignore the claims of others and to a great degree it is the vague fear of such possible claims coming in conflict and depriving the finder entirely of his gain and, also, in part, the secretive nature of the people which is averse from admitting the coming of hidden treasure even in a lawful manner, which have operated to prevent the discovery of hidden treasure seeing the light of day. At best these are only inducements to the finder to report cases of the discovery of hidden treasure. But the penalties attaching to the omission to report such cases are so severe that, to a reasonable mind, they should have a much stronger force than even those inducements, and if these fail, it is scarcely likely that the mere fact of the Government foregoing its right to the excess over one lakh can be more effective.

I can, therefore, confidently submit to the Council that no good purpose is served by sacrificing the right of Government *in toto* and making an innovation in the law or policy which has been in force in the State for many years.

I may also submit that almost all the high officers of this State including Mr. Thumboo Chetty, Mr. Chentsal Rao, Sir Sheshadri Iyer, and Sir P. N. Krishna Murti have held the opinion that the policy of our Rules was safer to follow than that of Act VI of 1878 in this respect.

These remarks are, I believe, sufficient to meet the objection of Mr. Nagappa. I may also point out that he is slightly in error in thinking that the law as administered in British India, *i.e.*, Act VI of 1878, is practically the law of the Middle Ages, which, as explained by the Hon'ble Sir Edward Bayley, is quite the reverse.

In Section 12 some modification has been introduced in para 2 to give effect to this policy and also the share of the finder has been reduced to half instead of three-fourths as in Act VI of 1878. The latter alteration was made in the original Draft Bill as presented to the Council in accordance with the views expressed by the various officers of the State.

In clause 19 a provision has been introduced to make the procedure clear and in order to safeguard the rights of persons who might have been, without any fault of their own and under justifiable circumstances, prevented from coming forward to present their claims within the time prescribed in the Deputy Commissioner's notification.

It remains for me now only to commend for the favorable consideration of the Council the recommendation of the Select Committee that in any case the finder should be indemnified for his trouble and should be granted such reasonable compensation including actual expenses incurred when he is not otherwise benefited by the discovery. The existing rules provide for it and it is but reasonable that he should have this advantage not only as a matter of justice but also to serve as an inducement against concealment of the discovery of any treasure.

In conclusion, I have only to urge that we have adhered in the main to the law as it is in force in British India, that the modifications we have introduced do not materially cut into the rights of the finder and are not in any way calculated to make him less inclined to report the discovery of any treasure; and I therefore beg to move under Section 46 of the Rules relating to the conduct of the business of this Council that the Bill and the report be taken into consideration at once.

RAJAMANTRAPRAVINA MR. C. SRINIVASAIYENGAR seconded the motion.

MR. H. V. NANJUNDAYYA in supporting the same spoke as follows:—

SIR,—I have to say one or two words in this connection. It appears to me that a considerable amount of controversy might be raised on the insertion of the words "or otherwise" in clauses 11 and 12 of the Bill. The question of limitation does not arise in this case, because it cannot be said that either the treasure-trove

was in the possession of any person who originally deposited it or his representative, or in the adverse possession of the party who is in possession of the field or the land in which it was buried. But, as a matter of convenience, I believe, it was decided, when the Act of British India was passed, that 100 years should be taken practically as the limit of time within which a claim might be advanced. Of course, it would be difficult to conceive of cases in which parties would be able to prove that the treasure which had been buried more than 100 years before had belonged to their ancestors. The effect of introducing the expression "or otherwise" in these clauses would be practically to take away this limitation and to make it open to the parties to prove that the property that has been buried any number of years previous to the discovery might have belonged to their ancestors. As I already observed, it would be extremely difficult to make good such a contention. And taking into consideration this difficulty, I am disposed, after all, to agree with the learned mover of the Bill, that there would be no harm in retaining the expression "or otherwise."

Perhaps it may also interest the Council to know what the Hindu Law on the subject of the treasure-trove is. It would show that, in matters of this kind, lapse of centuries would make little difference. The Hindu Law has it that when a man can prove his claim to the treasure-trove, the King shall take one-sixth or one-twelfth part of it: and the commentators say that, of the treasure-trove which is secretly buried in the ground, the amount taken by the King would depend on the virtues of the finder, his caste, etc. There was no limitation prescribed for the claims of owners. In fact that property only was considered treasure-trove, of which the owner was not known. It is also provided that notice should be given to the King, failing which the finder was liable to be treated as a thief. The owner of the land was not entitled to any share at all under the old law. The King was entitled to a half or to nothing if the finder happened to be a Brahmin. These are the main provisions, and they show that there is not very much difference between the law of ancient India and that of the present; and between the law in this respect in the Middle Ages and at present in Europe.

The only other point is that connected with the amendment proposed by Mr. B. Nagappa, *viz.*, that the Government should give up their claims to the excess above one lakh of rupees in value. As was observed by the Revenue Commissioner, it is rarely that such cases would occur and, in fact, no such cases have been known to us. As the section is rather providing practically for imaginary cases, it is just as well that we keep the present limit of a lakh of rupees in our proposed Regulation.

For these reasons, I beg to support the motion of the Revenue Commissioner.

MR. TIRUMALACHAR.—I beg also to support Mr. Rangaswami Iyengar's motion. With reference to Mr. Nagappa's remarks on clause 16 of the Bill under consideration, I beg to state that whatever may have been the law under the Roman Emperors of old, or in the Middle Ages of Europe, ancient Indian law at all events was in favor of the King's taking one-half of all hidden treasure discovered. The Institutes of Manu to which Mr. Nanjundayya just now referred contain a distinct provision that the King's share in the treasure-trove shall be one-half. I think he anticipated me by quoting the translation from Manu. But I think there is another passage in Manu which, for the information of the Council, I may be permitted to read:—

ನಿಧೀನಾಂತು ಪುರಾಣಾನಾಂಧಾತೂನಾಮೇವ ಚಕ್ಷಿತೌ । ಅರ್ಧಭಾಗಕ್ಷಣಾದ್ರಾಜಾಭೂಮೇರಧಿಪತಿರ್ಹಿ ಸಃ ।

"The King obtains one-half of ancient hoards, and metals (found) in the ground by reason (of his giving) protection, (and) because he is the lord of the soil."

(The Institutes of Manu, chapter 8, verse 39.)

MR. NANJUNDAYYA quoted the earlier passage in the same chapter, which is,

ಯಮಾಯುಮಿತಿಯೋಬ್ರೂಯಾದ್ಧನಿಕಸ್ಯೇಹಮಾನವಃ । ತಸ್ಯಾದದೀತಷಡ್ಭಾಗಂರಾಜಾದ್ವಾದ್ವಾದಶೇವವಾ ।

"From that man who shall truly say with respect to treasure-trove 'this belongs to me,' the King may take one-sixth or one-twelfth part."

(The Institutes of Manu, chapter 8, verse 35.)

As Mr. Rangaswami Iyengar explained, the chances of a person discovering more than a lakh of rupees worth of treasure-trove will be extremely rare, and may

not be even one in ten thousand. The finder will practically get almost all the treasure and the King will get little or nothing. Under these circumstances, I support clause 16 of the Bill as it stands and think that it is a good provision ; for this reason that even Manu did not contemplate that the King should not receive anything. On the other hand, he expressly laid down that he shall receive one-half in all cases. This is the very old law which had been replaced by the law of the Middle Ages and here, in Mysore, we have a very wholesome provision made that the finder shall be entitled to the treasure up to one lakh of rupees and anything beyond shall go to Government.

The motion for the consideration of the report of the Select Committee and the Bill as amended by them was put to the Council and carried.

RAJAKARYAPRAVINA MR. RANGASWAMI IYENGAR then moved that the following proviso be added to clause 8 of the above Bill, *viz.* : —

"Provided that in the event of the claimant succeeding in his suit, it shall be competent to the Civil Court to award the finder a reward not exceeding one-fourth the value of the treasure."

In so doing, he said :— .

SIR,—As the members of the Council are well aware, under the Bill as it stands, the finder will get half the treasure when the same is declared ownerless. This would be a sufficient inducement for him to report the find and also sufficient compensation for his trouble or the luck which helped him to find the treasure. But when under clause 8 the claimant to the treasure is referred to a Civil Court and eventually succeeds in establishing his right to the treasure either as the owner himself or as the successor of the original owner of the property, the Civil Court will have no option but to decree the whole of the treasure to the claimant. The finder will then have to go without any reward for the trouble he has taken. The object of the new enactment is to increase the chances of the report of the finding of the treasure. If the finder has to go without any reward and if he is kept in fear that in case he makes the find public some claimant might appear and carry off the whole without leaving anything to himself, the chances are that such finder will rather try to conceal the discovery than report it. To give him some substantial portion of the treasure for discovering it would be to offer him an incentive to the publication of the discovery.

It was with this object that the Select Committee recommended some addition to the Bill. But they did not feel themselves justified in making that addition at that stage, as they wanted to ascertain the sense of this Council before their intention was reduced to practice.

Now, with the permission of the Council, I beg to move that this additional clause be added to clause 8 of the Bill.

MR. C. SRINIVASAIENGAR.—Under clause 11, if there is no owner of the land claiming the treasure or other person entitled to it, the finder gets the whole. Under clause 12, the finder shares the treasure with the owner of the land or with the person who establishes his right to it in some other manner. There is only one class of cases in which, as the Bill now stands, the owner will go without anything for himself : that is, the cases contemplated in clause 8. If a person comes forward and proves that the treasure belongs to him, that it was hidden by him or by some person through whom he claims, within the past 100 years,—that person is entitled to a decree from a Civil Court for the possession of the treasure. In such cases, the finder will get nothing. And it is possible that in such cases the finder will have incurred some expenses for which he should be re-imbursed. Under the present rules, there is provision for re-imbursing him even as a reward. So, some provision for this was considered reasonable by the Select Committee and I am glad that the Government have viewed the Committee's recommendation favorably.

I accordingly beg to second the motion.

The Council agreed unanimously to the adoption of the proviso to clause 8.

MR. NAGAPPA.—SIR,—I beg to move that clause 16 of the above Bill and the words in italics appearing in clause 12, *viz.*, "not exceeding a lakh of rupees in amount or value" and the word "remainder" occurring after the words "the other half" be omitted.

As has been observed by the learned mover (Mr. Rangaswami Iyengar), the provision contained in clause 16 is a new departure from the Indian Act. The reason that has been adduced against my amendment, so far as I can gather from the learned mover's speech, is that the reason which induced the Government of India to waive its claim was the hope (of the Hon'ble Sir Edward Bayley) that the finders would come forward and report about the treasure discovered by them.

The simple answer to this argument is that the penalties which have been imposed by this Regulation are so very severe as would act as a check to the finder against not reporting. He will not only lose the treasure, but will also be prosecuted. So, I submit that the reason which induced the Hon'ble Sir Edward Bayley to waive the claim in British India is amply met by the penalties.

The second reason alleged by the mover is that the provisions of clause 16 have been in force for many years, that several statesmen have expressed themselves in its favor and that there is therefore no reason to make a new departure now.

I may bring to the notice of the Council that the Notification of 1867 is of doubtful legality, inasmuch as it has not received the sanction of the Government of India. If that measure was not called in question, it was because cases have not occurred to enforce that rule. Mainly to rely upon a measure which is of doubtful legality and to say, that we have to enforce it, is, I submit, to stand on a very slippery ground.

The learned mover said that I was in error in thinking that the law in British India is that of Middle Ages.

I may only refer him to Hon'ble Sir Edward Bayley's speech in support of my contention :—

"The principle which the existing Indian Law, so far as there was any law, "had adopted, was practically that of the Middle Ages. It might be said to assume "the right of the State, but to waive it on certain conditions and within certain "limits in favor of the finder. He thought that on broad principles of equity, "that principle might very fairly be defended. Where no prior claim could be "proved, it was at least a fair contention that property of any value so found "should pass to the public treasury, and be used for the purposes of the general "community. The real objection in adopting this principle was, that in practice "it could not be enforced and as in the case of all other laws which could not be "enforced, it became not only useless, but mischievous and demoralizing. He did "not mean to assert that the real reason of the provisions of the Indian Law or of "the English Law from which it was mutated, showed that it actually was founded "on this principle. He believed as a matter of history that it was founded rather "on feudal ideas which it was unnecessary here to discuss. The principle which "the present Bill proposed to adopt was that, practically of the old Roman Law of "the Emperor Hadrian, and of the French and Louisianian Codes and to a certain "extent also, as he would presently explain, of the law as it now stood (for it had "been not very long since altered) in Denmark."

The 4th reason urged against my amendment is that cases of the nature covered by my amendment are very rare. My answer is that the cases are very rare is no reason why we should give up a principle. The principle is whether the State has any right to claim the property. The antecedent right of the person has been recognized in the Bill by a distinct provision. When we have recognized that, how can the State come forward and say "we can only recognize your right up to a lakh of rupees"? It is only just that the State should give up the entire right.

RAJAMANTRAPRAVINA MR. C. SRINIVASIENGAR.—It is the case of the *finder* that is contemplated in clause 16 and *not of the owner*.

RAJAKARYAPRAVINA MR. A. RANGASWAMI IYENGAR.—It is only the finder that will not be given more than a lakh. Anything above that will go to Government. The *owner of the treasure*, if he proves his claim, gets the whole.

MR. B. NAGAPPA.—The finder steps in when the antecedent rights are not recognized. My learned friend Mr. Tirumalachar quoted from Manu a passage laying down the law about the treasure-trove. But my doubt is whether at any time that law was enforced. The modern tendency in all countries is not to recognize the right of the State to the hidden treasure discovered. The law in England is quite different from the law in British India. English Law follows for the most

part the feudal system; and we cannot bring in the analogy of the English Law with reference to Indian conditions, where the land tenure is so different. On principle, the State should not come in for any portion of the treasure-trove.

The motion was not seconded and was accordingly lost.

RAJAKARYAPRAVINA MR. A. RANGASWAMI IYENGAR.—There is another motion standing in my name, and that is, that the Bill as amended be taken up and passed at a subsequent meeting of Council.

We have had a fairly full discussion of the amended Bill as published and placed before the Council; and Mr. Nagappa, who had recorded a Note of Dissent on one point in the Select Committee and who had also moved on the same subject here, was not seconded. I think the Government have not received any objections from the public. So, it is only to be passed after reasonable notice. Hence, I move that the Bill be taken up and passed at the next meeting.

RAJAMANTRAPRAVINA MR. C. SRINIVASIENGAR seconded the motion.

The motion was put to the Council and carried.

Bill further to amend the Code of Civil Procedure.

MR. S. NARAYANA RAO.—SIR,—I beg to move that leave be granted to withdraw the Bill introduced at the meeting held on Monday the 21st February 1908, relating to the amendment of Section 310A of the existing Code of Civil Procedure. When this Bill was introduced at the said meeting, the British Indian Legislature had under their contemplation the remodelling of their whole Code of Civil Procedure. They have subsequently passed their Act V of 1908, recasting the Civil Procedure Code and re-arranging certain portions thereof on different principles altogether. In view of the fact that a motion will next be made for permission to introduce a Bill to consolidate and amend the law relating to the procedure of the Courts of Civil Judicature in this State also, based on the Indian Act V of 1908, it is desirable that the present Bill should be withdrawn. I therefore ask for permission to withdraw the same.

MR. K. S. CHANDRASEKHARA AIYAR seconded the motion.

The motion was put to the Council and carried.

Bill to consolidate and amend the law relating to the Procedure of the Courts of Civil Judicature in Mysore.

MR. H. V. NANJUNDAYYA, in moving for leave to introduce the above Bill said as follows:—

SIR,—The object of this Bill which I have the honour to present to you is to introduce into Mysore the Code of Civil Procedure in the form adopted in British India in Act V of 1908, after the long deliberations of an exceptionally strong Committee, among whom our present learned Chief Judge was one of the prominent members. The present Code contains 653 sections, but a glance at the Bill before you will show that the number of sections is reduced to 158, which is about a fourth of the old size. A comparison of the table of contents with that prefixed to the Code now in force will likewise show that a large number of omissions and alterations have been made. You need not, however, be startled by these apparent changes, and imagine that we have placed before you any radical or revolutionary piece of legislation. Appended to the main Regulation are a number of orders to which almost the whole of the matter left out in the body is transferred almost bodily. They contain altogether 564 sections, so that you will see there has been no reduction in the bulk of this huge enactment. What then, it may be asked, is the necessity for this drastic change of form in the Code? for, it is undoubted that there are always serious inconveniences in altering the form and the familiar numbering of the provisions of a Code so often consulted in practice. Those who have learnt their law in the old Code will always be at a loss, where a familiar rule which they can quote by memory from the old Code is found in the

new, and will need a concordance to help them to find out whether a reported decision is in accordance with what was the previous view.

The object of the Indian legislature seems to have been mainly twofold. The old Code had put together all its provisions in a certain logical order indeed but without due discrimination of their comparative importance, and rules involving important principles of jurisprudence which could scarcely be altered were placed along with rules of minor procedure which would need changing often according to place and experience gained in the course of their administration. The second fact that was chiefly instrumental in dictating the change was that the Code had to be applied over such a large area consisting of various provinces differing in the intelligence and progress of the people, and of various kinds of judges and lawyers, that it was considered highly desirable to give each province certain latitude in adapting their rules of minor procedure to their needs. The latter consideration does not apply to a small homogeneous State like ours. But the first reason is equally important here as in British India. Moreover, after the institution of this Legislative Council, the mode of bringing about alterations in law has become somewhat more complicated than before, and it is unnecessary that changes in minor rules of procedure which are mainly based on reasons best appreciated by practical professional lawyers should be subjected to all the formalities of a passage through the regular legislative body of the State. There is another though comparatively unimportant advantage which practising lawyers will have,—they will find it easy to refer to reported decisions of the British Courts and to commentaries published in British India as authorities in the course of their pleading.

Turning now to the provisions of the Bill, as I have already mentioned, there are only a few alterations of the law as now in force. What these are may be easily found out by a reference to any good commentary on the Indian Code, of which many have already been published. They will no doubt be taken into due consideration by us before this Bill is finally passed. In the draft before you, we have merely made the verbal alterations required to apply the Code to our State. We have retained those few special provisions which are peculiar to Mysore. These can be easily discovered by referring to the sections whose numbers are given in the margin of the Bill, and more easily by going over the smaller paper in which the alterations made in the British Act are indicated. As examples of our local provisions, I may mention the explanation to Section 43; the exemption of members of the Barr and Sillhedar Forces from arrest, Section (55); the three clauses added to Section 60, of which the last relating to Military retiring fund is new; the omission of reference to suits against Government (clause 17); the allowing of second appeals on questions of fact (clause 21); the alteration of the pecuniary limit to bar second appeals (clause 22); and the insertion of a protective provision in favour of Judicial officers (clause 37). The list given for the constitution of the Rules Committee in Section 123 (clause 25) is a tentative one deserving further consideration before being finally adopted.

I now beg to move that permission may be kindly accorded to me to introduce this Bill to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

MR. S. NARAYANA RAO seconded the motion and said :—

SIR,—There is one great advantage to both the Judges and Practitioners in this Province in having a Code of Civil Procedure similar in form to that in force in British India; they will often have to refer to decisions in other Courts and it will be easier for them to do so if the same form of the Code is adopted here also. There is, of course, not much difference between the old and the new Code. The new Code is virtually formulated on the same principle as the old. There are, of course, some departures in certain sections. These will receive full consideration in the Council.

MR. B. NAGAPPA.—It gives me great pleasure to support the motion just now made. It is not too early for us to have thought of such a measure. It ought to have been introduced much earlier. The Act came into force in British India on the 1st January 1909. As the learned mover has thought fit to embody in the Bill all the provisions which are peculiar to Mysore, especially those relating to

second appeals on questions of fact and those relating to Sections 43 and 17, I think it ought to have the heartiest support of all the members of the Bar.

The motion was put to the Council and carried.

Bill to consolidate and amend the law relating to the Limitation of Suits and for other purposes in Mysore.

In moving for leave to introduce the above Bill, Mr. H. V. Nanjundayya said :—

SIR,—I do myself the honour to move that leave may be granted to me to introduce a Bill for the consolidation and amendment of the Law of Limitation in Mysore. The proposed measure is mainly one of consolidation and opportunity is taken to introduce a few minor alterations required by the decisions of Courts on some disputed points. It is unnecessary to enter into any details at this stage.

The motion was seconded by Mr. S. Narayana Rao and supported by Mr. B. Nagappa. It was then put to the Council and carried.

Bill to consolidate and amend the law relating to Insolvency in Mysore.

In moving for leave to introduce the above Bill, Mr. H. V. Nanjundayya said as follows :—

SIR,—The Law of Bankruptcy is a highly developed branch of commercial law in modern countries. Its main underlying principles are that an honest debtor who tries his best to honestly meet his obligations, but is unable to do so owing to circumstances beyond his control, shall not be for ever weighted down by the incubus of his debts, but may have a chance of retrieving his misfortunes by devoting himself afresh to some other business. It is true that in practice as many at least of dishonest men get the benefit of this law as those who have been scrupulous in their dealings and honorable in their intentions. The old-world idea, which fortunately is still entertained by not a few persons in our society, is that debt is a pious obligation which can be dissolved only by a substantial discharge; and many more persons are restrained from having recourse to the provisions of the Law of Bankruptcy by an active sense of the stigma that attaches to a discharged bankrupt.

Our present law on this subject is contained in Chapter XX of the Code of Civil Procedure; but it deals with the subject only in a fragmentary manner. It cannot be availed of except by a debtor who has been actually arrested in execution of a decree or by a creditor, who has already obtained a decree in his favor. But, under the proposed law, the remedy can be obtained both by debtors and by creditors in a larger number of cases. It is likely that as the spirit of speculation is largely wanting in the subjects of this State, Courts will not be resorted to in many cases. In such matters, example has a large influence in showing people that it would be an advantage to get rid of obligations they cannot possibly fulfil and to endeavour to restart in life unhampered by their burden, and in blunting their sense of honour. The lack of such examples fortunately is also likely to render the use of these new provisions rare for a long while. But as we have omitted the insolvency provisions in the new Bill, it is at any rate necessary that they should be either retained there or re-enacted in some other shape. It is just as well that we should have a fuller enactment, even though all the provisions may not immediately be required for practical application; and as the subject is one that does not readily fall within the proper scope of a law of ordinary Procedure of Courts, it is considered expedient to adopt the British Indian Act.

It is unnecessary to refer to the provisions of the Bill in detail at this stage. They will no doubt receive full consideration before being finally approved. I beg now to move that leave may be granted to me to introduce this Bill before the Council.

MR. S. NARAYANA RAO.—SIR,—In seconding this motion, I wish to state that the Bill to introduce the Civil Procedure Code which has just been adopted by this Council renders the introduction of the Insolvency Bill necessary, as Chapter XX of the old Code has been omitted in the new Code.

The motion was put to the Council and carried.

Bill to consolidate and amend the law relating to Guardians and Wards in Mysore.

MR. K. S. CHANDRASEKHARA AIYAR.—SIR,—I beg to move for leave being granted to introduce a Bill to consolidate and amend the law relating to Guardians and Wards in Mysore.

The law at present in force on the subject consists of certain Rules issued with the sanction of the Government of India so far back as 1872. These rules, which are applicable also to lunatics, have been found to be defective in several respects, and it is proposed to replace them (so far as they relate to the guardianship of minors) by a Regulation based on the provisions of the Guardians and Wards Act, VIII of 1890, of the Indian Legislature, which is fuller and more comprehensive and up to date.

The case of lunatics will be dealt with by separate legislation, and till then so much of the rules of 1872 as relate to this class of persons will have to be retained.

I do not wish to detain the Council with an account of the changes, verbal and other, that have had to be made in the process of adapting the provisions of the Indian Act to local purposes; a suitable occasion for this will arise when the Bill is actually introduced into the Council. But there is one point to which I may make a passing reference, as it concerns the age of majority under the new law. Under the existing rules this is fixed at 18 years. But the time appears to have come when the age of majority may advantageously be raised from 18 to 21, wherever possible; or at all events in those cases in which Courts have to provide for the guardianship of minors and their estates. The point is an important one which will no doubt receive the careful consideration of the Legislative Council when the Bill comes up for detailed discussion.

MR. H. V. NANJUNDAYYA.—I beg to second the motion. The only point for consideration is about the age of majority. This is an important point which will be considered before the Bill is adopted. As it will receive all the consideration that it deserves, it is unnecessary for me to deal with it at this stage.

The motion was put to the Council and carried.

Bill further to amend the Mysore Chief Court Regulation, I of 1884.

MR. H. V. NANJUNDAYYA.—SIR,—In Section 3 of Regulation I of 1884 relating to the Chief Court of Mysore, "Full Bench" is defined as a Bench consisting of all the Judges of the Chief Court. Lately, when it was found expedient to appoint a fourth Judge as a temporary measure, some difficulty was experienced in hearing cases before a Full Bench, as it was feared that if the Judges were equally divided there would be an *impasse*, as neither the Regulation nor the Code of Civil Procedure could solve the difficulty. The fourth paragraph of Section 575 which requires a decree to be affirmed when there is no majority which concurs in modifying or reversing it would have been sufficient; but, the last paragraph added in 1892 by Regulation VII giving preference to the provisions of the Chief Court Regulation in cases of conflict rendered this nugatory.

The difficulty, however, did not actually occur, as three Judges happened to concur, in the case which gave rise to the proposal of the Chief Court before us. At present there are only three Judges and the Government of His Highness the Maharaja has no present intention of adding to the number. Though the immediate necessity has thus passed away, still as some Courts which have a much larger number of Judges are satisfied with three as the number required to constitute a Full Bench, it is just as well that we should so alter the definition as to make this

number sufficient. If the number of Judges remains as at present, there is no harm done; whereas if, in any future contingency, the number is increased either temporarily or permanently, we shall have a provision which would prevent the recurrence of the difficulty described.

I therefore take the liberty of moving that this Bill which consists of but one section to amend the Mysore Chief Court Regulation be read in Council.

MR. S. NARAYANA RAO seconded the motion.

The motion was carried and the Bill was then read by the Secretary.

MR. H. V. NANJUNDAYYA then moved that the above Bill be not referred to a Select Committee and that the ordinary rules of business be suspended so as to permit of the Bill being considered and passed by the Council.

MR. S. NARAYANA RAO seconded the motion which was put to the Council and carried.

MR. H. V. NANJUNDAYYA thereupon moved that the Bill be considered and passed by the Council. This was seconded by Mr. S. Narayana Rao.

The Bill was then discussed and passed by the Council.

Bill to recognize the representative character of the Administrator-General of Madras.

In moving that the above Bill be read in Council, Mr. Chandrasekhara Aiyar explained briefly, for the information of the members newly appointed, the reasons for the introduction thereof and observed that as the measure did not affect any private right adversely, and would not involve any loss of revenue to the State and as it was of a purely formal character intended merely to give effect to an understanding already reached as the result of exhaustive discussion, it might be considered and passed by the Council without a reference to a Select Committee.

The motion was seconded by Mr. Nagappa. The Bill was then read by the Secretary and considered by the Council.

After some discussion as to the effect of a competition between a person who has already taken out a probate or letters of administration in Mysore and the Administrator-General who intervenes later, Mr. Chandrasekhara Aiyar said :—

"As the result of the discussion we have had and on further consideration, I think it is advisable to consider the matter in detail in a Select Committee; and I therefore withdraw the motion just made and beg to move, instead, that the Bill be referred to a Select Committee consisting of Messrs. H. V. Nanjundayya, Rajamantrapravina C. Srinivasiengar, S. Narayana Rao, B. Nagappa and myself."

The motion was seconded by Mr. Syed Amir Hassan, was then put to the Council and carried.

As a result of the above, the motion for considering and passing the Bill was withdrawn.

Bill to provide for the regulation of the possession and sale of all poisons in certain local areas, and the importation, possession and sale of white arsenic generally in Mysore.

MR. K. P. PUTTANNA CHETTY.—SIR,—In presenting the report of the Select Committee on the Poisons Bill, I beg leave to make a few remarks. The Bill has undergone very little change at the hands of the Committee, and continues to be—what it originally was—an adaptation of the British Indian Act on the same subject. As I remarked in my opening speech, the only departure we have thought fit to make is in clause 10, sub-clause (2), of the Bill whereby the transactions of Medical and Veterinary practitioners and of Chemists and Druggists in poisonous drugs were sought to be brought under some sort of control. I need not repeat here the reasons for this departure. It is enough to remark that the Select Committee have, after due consideration, decided to retain this provision though they have slightly altered it so as to make its scope more definite and precise. It will

be remembered that in the Bill as originally drafted all transactions of Medical and Veterinary practitioners and of Chemists and Druggists in poisonous drugs were sought to be regulated. It was brought to our notice that the word "transactions", was rather too wide and that for all practical purposes it would be quite sufficient to bring only the sales of poisonous drugs within the operation of clause 10, sub-clause (2). The Select Committee accepted this view and have accordingly slightly altered the language of this sub-clause.

I understand that it is usual for Medical and Veterinary practitioners to keep in their consulting room and carry in their "Medical Bags" small quantities of poisonous drugs for occasional use in the treatment of their patients. I may state here that the Bill does not make such possession illegal nor even does it seek to regulate or control such possession. These practitioners will bring themselves under the provisions of the Bill only if they should regularly sell such drugs to the outside public. It will thus be seen that we have safeguarded, as far as possible, the freedom now enjoyed by *bonâ fide* Medical and Veterinary practitioners. I may add that in this view Colonel Smyth, the Senior Surgeon and Sanitary Commissioner, entirely concurs. The other amendments made in the Bill are either verbal or consequential.

I now move that the report and the Bill as amended may be taken into consideration by the Council.

MR. S. NARAYANA RAO seconded the motion.

The report of the Select Committee and the Bill as amended by them were then discussed by the Council; and as a result of the discussion on the amendment made by the Committee in clause 10 (2), the Council resolved to take up the Bill for further consideration at a subsequent meeting.

The Council then adjourned.

T. ANANDA ROW,
President.